

68700-001\DOCS_LA:12578.1

Brightway/Goates/McDonald v. SRI, et al.

**Summary of Amounts Due on 6/1/00
– Chapter 11 Bankruptcy Petition Date**

\$16,618.40	ERISA Benefits (29 U.S.C. Sec. 1132(a)(1)(B))
\$4,542.89	Interest (28 U.S.C. Sec. 1961)
\$262,220.00	Statutory Damages (29 U.S.C. Sec. 1132(c))
???	Attorneys Fees and Costs (29 U.S.C. Sec. 1132(g))
\$283,381.29	TOTAL DUE (exclusive of fees and costs)

Interest calculation

06/01/00

Case: BW/McDonald

DOS: 6/20/94-6/27/94 and 5/4/95-5/17/95

Year	Principal	Interest Rate*	Interest Amt
1995	\$16,618.40	0.060438	\$627.40
1996	\$16,618.40	0.055254	\$918.23
1997	\$16,618.40	0.056637	\$941.22
1998	\$16,618.40	0.051055	\$848.45
1999	\$16,618.40	0.047012	\$781.26
2000	\$16,618.40	0.061603	\$426.33
Total			\$4,542.89

*As set forth at 28 U.S.C. 1961, average for the year

Statutory Damages Calculation (29 U.S.C. Sec. 1132(c))

Case:

06/01/00

Brightway/Goates/McDonald v. SRI

	Date of request			TOTAL
	04/22/97	09/09/97	06/18/99	
Requested of:	HBI	HBI	SRI	
Authorization?	BW	Ltr from Attorney	Ltr from Attorney	
Documents requested	SPD,PD,C	SPD,PD,C,R,N,CR	C,R,N,CR	
+30 days	05/22/97	10/09/97	07/18/99	
BK Petition	06/01/00	06/01/00	06/01/00	
# of days to 7/29/97	68	n/a	n/a	
Penalties @ \$100/day to 7/29/97	6800	0	0	6800
# of days to today's date or date of prod	1037	966	319	2322
Penalties @ 110/day after 7/29/97	114070	106260	35090	255420
TOTAL	120870	106260	35090	262220

Legend to Documents Requested:

FS=Fee Schedule

C=Criteria

R=Rationale for lack of medical necessity

SPD=Summary Plan Description

PB=Plan Booklet

PD=Plan Document

PP=Policy provisions relied on

WD=Written Denial

N=Names of reviewers

Q=Qualifications of reviewers

A=Appeal procedure

PA=plan administrator info

K=Contracts

O=Written opinions of medical reviewers

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

BRIGHTWAY ADOLESCENT
HOSPITAL and DELBERT T. GOATES,
M.D.,

Plaintiffs,

vs.

BLUECROSS BLUESHIELD OF TEXAS,
a Texas corporation; HEALTHCARE
BENEFITS, INC., a Texas corporation;
SPECIALTY RETAILERS, INC.; and
SPECIALTY RETAILERS, INC./3
BEALL BROTHERS/PALAIS
ROYAL/FASHION BAR ASSOCIATE
BENEFIT PLAN.

Defendants.

FIRST AMENDED COMPLAINT

Case No. 2:99 CV 0010S

Judge David Sam

Plaintiffs, through their undersigned counsel, complain and allege as follows:

PARTIES, JURISDICTION & VENUE

1. Brightway Adolescent Hospital ("Brightway") operated a health care facility in St. George, Washington County, Utah, at which care was provided to Jennifer McDonald ("McDonald") from June 20, 1994, to June 27, 1994, and from May 4, 1995, to May 17, 1995.

2. Delbert T. Goates, M.D. ("Goates") is a natural person residing in the State of Utah and is the medical doctor who prescribed and provided treatment to McDonald in 1994 and 1995.
(Brightway and Goates may be collectively referred to herein as "Plaintiffs.")
3. Brightway and Goates have the right to enforce the claim of McDonald against the Defendants pursuant to an Assignment of Benefits signed in favor of Brightway and Goates by McDonald. A copy of the Assignment of Benefits is attached hereto as Exhibit A.¹
4. McDonald is the child of Jim McDonald and Margaret Drummond and the step-daughter of David Drummond. At the time of her treatment at Brightway, McDonald resided with her mother and step-father in Cerritos, California.
5. McDonald was the beneficiary of the Specialty Retailers, Inc./3 Beall Brothers/ Palais Royal/ Fashion Bar Associate Benefit Plan (the "Plan") through the employment of her father, Jim McDonald, at Specialty Retailers, Inc. ("SRI").
6. The Plan is a self-funded health benefits plan sponsored by SRI for its employees and their dependents and qualifies as an employee welfare benefit plan under 29 U.S.C. §1002(1) of the Employment Retirement Income Security Act ("ERISA").
7. SRI is a foreign corporation which provides health benefits for beneficiaries of the Plan. Upon information and belief, SRI also acted as administrator for the Plan and qualifies as a fiduciary for the Plan pursuant to 29 U.S.C. §1002(21) of ERISA.
8. BlueCross BlueShield of Texas ("BXBS") is the insurer for the Plan. At all times, BXBS also acted as either the Plan administrator or the agent for the Plan administrator in

¹ Exhibits referred to herein are not attached to the Plaintiffs' First Amended Complaint. There are no substantive changes found herein, and the exhibits are attached as marked to the original Complaint.

communicating with the Plaintiffs in considering the Plaintiffs' appeal for payment of the health care benefits that are at issue in this lawsuit. BXBS acted with discretionary authority to deny or approve payment of McDonald's claim.

9. Healthcare Benefits, Inc. ("HBI"), is a Texas corporation, and the third party administrator and agent for the Plan and/or SRI.
10. SRI, the Plan, BXBS, and HBI and may be collectively referred to herein as "Defendants."
11. This is an action brought under 29 U.S.C. §1001, et seq. This Court has jurisdiction over the causes of action under 29 U.S.C. §1132(e)(1) and 28 U.S.C. §1367.
12. Venue is appropriate under 29 U.S.C. §1132(e)(2) and 28 U.S.C. §1391 because of ERISA's nationwide service of process provision and because the Defendants have the requisite national contacts. In addition, the services rendered by Brightway and Goates took place in the State of Utah, breaches of the Plan occurred in the State of Utah, communications during the administrative appeal process took place between Plaintiffs and their agent, Claims Management, Inc. ("CMI"), to the Defendants in the State of Utah, and the breach of the terms of ERISA in failing to provide a copy of the Plan Document and the Summary Plan Description ("SPD") as requested by CMI and Plaintiffs' counsel occurred in the State of Utah.
13. The remedies Plaintiffs seek for the first and second causes of action under the terms of ERISA are for benefits due Plaintiffs pursuant to 29 U.S.C. §1132(a)(1)(B), for the penalties provided under 29 U.S.C. §1132(a)(1)(A) and 1132(c)(1), and for declaratory relief and an injunction ordering the Defendants to provide coverage under the Plan for the treatment provided to McDonald.

FACTUAL BACKGROUND

14. Plaintiffs reallege and incorporate by reference paragraphs 1 through 13 as though fully set forth herein.
15. On June 20, 1994, McDonald, then a 15-year-old minor, was admitted to Brightway. McDonald had failed outpatient treatment prior to her admission at Brightway.
16. Brightway and Goates treated McDonald from June 20, 1994, through June 27, 1994 (the "First Confinement"), and incurred expenses in that treatment which were billed to BXBS. The bill for the services rendered by Brightway totaled \$9,360.00. The bill for the services rendered by Goates totaled \$1,500.00.
17. The Defendants paid \$720.00 toward Goates' bill, but completely denied the bill for Brightway's services based on their conclusion that McDonald was "ineligible" and/or the treatment was not medically necessary. The total benefits due and owing to the Plaintiffs for the First Confinement is \$7,488.00. Copies of the various Explanation of Benefits ("EOB") related to the First Confinement are attached hereto as Exhibit B.
18. Private HealthCare Systems, Inc., the utilization review vendor for McDonald's secondary insurance carrier, had certified the First Confinement as medically necessary. See Exhibit C attached hereto.
19. McDonald's secondary insurance carrier, Great West, paid a total of \$469.00 to Goates for the First Confinement. Copies of these EOBs are attached hereto as Exhibit D.
20. Upon discharge, McDonald entered a residential treatment center, Cross Creek Manor.
21. McDonald was readmitted to Brightway from May 4, 1995, to May 17, 1995 ("Second Confinement") on the recommendation from her therapist.

22. The bill for the services rendered by Brightway during the Second Confinement totaled \$18,670.19. The bill for the services rendered by Goates during the Second Confinement totaled \$2,500.00.
23. The Defendants paid \$869.60 toward Goates' bill for the Second Confinement, but completely denied the bill for Brightway's services based on a lack of medical necessity. The total benefits due and owing to the Plaintiffs for the Second Confinement is \$9,130.40. Copies of the Defendants' various EOBs related to the Second Confinement are attached hereto as Exhibit E.
24. Great West paid Goates \$790.00 towards his bills for the Second Confinement. A copy of the Great West EOB is attached hereto as Exhibit F.
25. The total benefits due and owing to the Plaintiffs for McDonald's treatment at Brightway and by Goates is \$16,618.40. A claim calculation for both 1994 and 1995 is attached hereto as Exhibit G.
26. On April 22, 1997, CMI, a Utah corporation assisting families and health care providers in obtaining review of denied claims and assisting with the administrative appeal process for those denied claims, wrote two letters (one for each confinement) to HBI, to the attention of the Medical Review Department, asking for an appeal of the denied claims for Brightway and Goates. Copies of CMI's letters of April 22, 1997, are attached hereto as Exhibits H and I.
27. In its letters, CMI indicated that it was the authorized representative of Brightway and submitted a signed authorization letter from Brightway.
28. CMI requested in both letters that if HBI maintained its denial, that it provide CMI with a copy of the utilization review criteria which was used to determine that the confinements

were not medically necessary; a copy of the Plan Booklet or Summary Plan Description so that they might "follow the appeals process to exhaustion before referring this file to legal counsel."

29. On June 18, 1997, Lori Jones of HBI responded to CMI by stating merely that the denial was upheld. HBI did not provide CMI with the information it had requested in its two April 22, 1997, letters. A copy of HBI's June 18, 1997 letter to CMI is attached hereto as Exhibit J.
30. On September 9, 1997, Plaintiffs' counsel, King & Isaacson, wrote to Lori Jones, Claims Specialist at HBI, once again asking for copies of the criteria utilized in maintaining denial of the claims, a copy of the plan booklet or summary plan description, identification of each and every specific reason for denial of the claim based on lack of medical necessity, and, if outside review was completed, the names and credentials of those reviewers, along with their rationale and/or any prior opinions regarding the claims. A copy of King & Isaacson's September 9, 1997, letter to HBI is attached hereto as Exhibit K.
31. No response has been received by King & Isaacson to its September 9, 1997, letter.

FIRST CAUSE OF ACTION

(Claim for Benefits Under 29 U.S.C. §1132(a)(1)(B))

32. Plaintiffs reallege and incorporate by reference paragraphs 1 through 31 as though fully set forth herein.
33. The actions of the Defendants in failing to provide coverage for the treatment provided to McDonald, despite the recommendation for in-patient care from Goates and other physicians, is a violation of the provisions of the Plan in the following specific ways:

- (A) The care provided to McDonald was medically necessary and covered under the Plan terms.
 - (B) The Defendants failed to provide competent peer review of the recommendations of the treating physicians for McDonald that in-patient care was recommended.
 - (C) The Defendants failed to act in good faith in carrying out the administrative appeal process when they refused to communicate with the Plaintiffs' counsel or their agents and by refusing to produce relevant and necessary information to allow for a fair and full consideration of the appeal of the denied benefits claim.
 - (D) The Defendants breached their fiduciary duties when they failed to comply with their obligations under 29 U.S.C. §§1104 and 1133 to act solely for the exclusive purpose of providing benefits to Plan participants and beneficiaries and when they failed to provide a full and fair opportunity to the plaintiffs to appeal their denied claims.
34. The actions of the Defendants as outlined above are in violation of ERISA and a breach of the terms and provisions of the Plan document and Summary Plan Description establishing the rights and liabilities of the parties.
35. The Defendants are responsible to pay the Plaintiffs the benefits owed for care provided to McDonald in the amount of \$16,618.40, together with attorney's fees and costs pursuant to 29 U.S.C. §1132(g) and pre- and post-judgment interest to the date of payment of the unpaid benefits.

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SECOND CAUSE OF ACTION

(Violation of 29 U.S.C. §§1024(b)(4), 1132(a)(1)(A), and 1132(c)(1))

36. Plaintiffs reallege and incorporate by reference paragraphs 1 through 35 as though fully set forth herein.
37. The actions of the Defendants as the Plan administrator(s) or as agent for the Plan administrator in failing to provide, within 30 days from April 22, 1997, copies of the Plan Document and Summary Plan Description and other relevant documents under which the Plan was operating, as requested by CMI, and in failing to provide within 30 days from September 9, 1997, the documents referred to in Exhibit J under which the Plan was operated are violations of 29 U.S.C. §1024(b)(4).
38. The violations of 29 U.S.C. §1024(b)(4) have damaged the Plaintiffs by impeding their ability to determine the extent and scope of coverage under the Plan, hindering verification of the degree to which exclusions or limitations on coverage exist, impairing the Plaintiffs' ability to pursue administrative appeal of the Plan's denial of payment, impairing Plaintiffs' ability to determine whether the criteria used was valid, hindering the Plaintiffs' ability to determine whether the Defendants had medical reviewers who were qualified to second guess the recommendations of McDonald's treating physicians, and limiting the Plaintiffs' ability to determine whether other Plan provisions exist which would either provide that McDonald's bill should be paid under the Plan or more clearly demonstrate that payment of the claim should be denied.

39. In addition, as a consequence of the failure of the Defendants to provide the requested information in a timely manner, Plaintiffs have been required to obtain legal counsel and file this action.

40. Pursuant to 29 U.S.C. §§1132(a)(1)(A) and 1132(c)(1), Plaintiffs are entitled to payment of a statutory penalty of a maximum of \$100.00 per day from May 22, 1997, for McDonald to July 19, 1997, and in the maximum amount of \$110.00 per day from July 20, 1997, to the date of the production of the requested documents; for \$110.00 per day from October 9, 1997, for requests for operating documents under the Plan to the date of the production of the requested documents; as well as an award of attorney's fees and costs incurred in the bringing of this action pursuant to the provisions of 29 U.S.C. §1132(g).

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. Upon Plaintiffs' First Cause of Action, in the amount of \$16,618.40, the unpaid amount for McDonald that should be covered under the provisions of the Plan for the treatment provided to him, plus attorney's fees and costs incurred pursuant to 29 U.S.C. §1132(g), and pre- and post-judgment interest to the date of payment.

2. For judgment on Plaintiffs' Second Cause of Action in the amount of \$100.00 per day penalty under 29 U.S.C. §§1132(a)(1)(A) and 1132(c)(1), from May 22, 1997, to July 19, 1997, and for \$110.00 per day from July 20, 1997, to the date of production of the requested documents to Plaintiffs, or its agent CMI, against the Defendants (\$63,900.00 through January 1, 1999); and in the amount of \$110.00 per day from October 9, 1997, to the date of production of the requested documents to Plaintiffs' counsel against the Defendants (\$49,280.00 through January 1, 1999); and

attorney's fees and costs incurred pursuant to 29 U.S.C. §1132(g), and post-judgment interest incurred to date of payment of the judgment.

3. For such other and further relief as the Court deems equitable.

DATED this 9th day of December, 1999.

KING & ISAACSON, P.C.

By: Marcie E. Schaap
Brian S. King
Marcie E. Schaap
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document entitled
First Amended Complaint has been delivered via U.S. mail, postage pre-paid, to the following:

Andrew H. Stone
JONES, WALDO, HOLBROOK & McDONOUGH
170 So. Main St. #1500
Salt Lake City, UT 84101

Karra J. Porter
CHRISTENSEN & JENSEN
50 South Main Street, Suite 1500
Salt Lake City, UT 84144

DATED this 9th day of December, 1999.

Marcie E. Schaap